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| First Named Inventor | Robert E. Haines | PRE-APPEAL BRIEF REQUEST FOR REVIEW |
| Serial No. | 09/966,407 | |
| Filing Date | September 28, 2001 | |
| Group Art Unit | 2618 | |
| Examiner Name | Tuan Hoang Nguyen | |
| Confirmation No. | 8759 | |
| Attorney Docket No. | 10012345-1 | |
| Title: SELECTIVE COMMUNICATION IN A WIRELESS NETWORK BASED ON PEER-TO-PEER SIGNAL QUALITY | | |

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 Commissioner for Patents
 P.O. Box 1450
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In response to the Final Office Action mailed January 29, 2008 and the Advisory Action mailed April 25, 2008, please consider the following in the Pre-Appeal Brief Request for Review:

REMARKS

Appellant contends that the rejections are premised upon several errors in analysis of the cited references. Appellant further contends that there is no valid basis provided for the combination of the cited references. As such, the rejections are improper and must be withdrawn.

The Examiner states, “[A]pplicant’s argument that Burgan et al. (U.S PAT. 6,675,022 hereinafter, “Burgan”) in view of Garceran et al. (U.S PAT. 6,522,888 hereinafter “Garceran”) references cited by the Examiner does not teach ‘identify detected devices that match any selection criteria’ as recited in claims 1, 5, and 18. Examiner respectfully disagrees with the Applicant’s argument. . . . The address 406, 414 is used to identify the communication devices intended to receive the outbound information such as the localized information 410 and the individualized information 418 interpreted as ‘identify detected devices [sic] that match any selection criteria.’” Advisory Action, Continuation Sheet. Appellant first notes that the asserted identification is not purported to be of a wireless network device from which a signal has been detected, as recited in Appellant’s claims, but of the wireless device receiving the detected signal. Appellant further notes that any identification results from information contained in the detected signal itself, and not from supplemental information received in response to a query as recited in Appellant’s claims. With the Examiner identifying Burgan et al.’s receiving communication devices as corresponding to Appellant’s detected wireless network devices, Appellant contends that remaining elements of independent claims become nonsensical in the application of Burgan et al. as these communication devices are not prioritized and there is no discussion of any detection of these communication devices. In fact, the broadcast transmission sites of Burgan et al. can be wholly unaware of the existence of these communication devices.

The Examiner further states, “Regarding claim 12 Applicant [sic] argues that the combination of Burgan and Garceran cannot teach, suggest or imply ‘querying to determine whether a wireless network device is of a desired type and has a desired status as neither reference, nor the combination, addresses associating a signal quality with a network device on the basis of determining that it has any specific device type or status’. Examiner respectfully [sic] disagrees with the applicant’s argument. Garceran’s reference col. 8 lines 57-66 recites this limitation i.e., figure 2 during the call or if the call is active at block 115, the serving base station

56 (FIG. 2) and/or the neighboring base station(s) 60a-h can query the wireless unit 54 at block 116 for data, such as location information and associated information or measurements.”

Advisory Action, Continuation Sheet. However, Garceran et al. does not query to determine whether a device has a specific type or status, but merely to collect historical information. *See, e.g.*, Garceran et al., column 12, lines 12-28. Thus, Garceran et al. requests supplemental information from its wireless units and associates that supplemental information with signal quality information without regard to any selection criteria based on that supplemental information. Claim 12 further recites, “associating the signal quality with the wireless network device in response to determining that it is of the desired type and it has the desired status.” Therefore, the mere collection of historical information, without the specific act of determining whether a device is of the desired type and has the desired status, cannot teach or suggest these limitations.

The Examiner admits, “Burgan does not explicitly show that querying for supplemental information from each of the detected wireless network devices; and identifying each of the detected wireless network devices that match a selection criteria using the supplemental information.” Final Office Action, page 2, first full paragraph. The Examiner then relies on Garceran et al. for this admittedly missing element. The Examiner states, “In the same field of endeavor, Garceran teaches querying for supplemental information from each of the detected wireless network devices (col. 3 lines 15-25 and col. 8 lines 57-61); and identifying each of the detected wireless network devices that match a selection criteria using the supplemental information (col. 3 lines 6-25).” Final Office Action, page 2, second full paragraph. However, neither the cited section of Garceran et al., nor the reference as a whole, supports the contention that Garceran et al. teaches identifying each of the detected wireless network devices that match a selection criteria using the supplemental information. In contrast, Garceran et al. seeks to determine coverage in wireless communications systems. Garceran et al., column 2, lines 7-12 (“The present invention involves a system for determining coverage in a wireless communications systems using location information for a wireless unit and collecting information on communications between the wireless unit and the wireless communications system in association with the location information.”). Thus, it would be against the purpose of

Garceran et al. to identify those detected devices that match a selection criteria as the result would be to limit its collected information and thus limit its ability to determine coverage.

Appellant further contends that the combination of Burgan et al. and Garceran et al. is improper. In particular, there is no valid reasoned statement as to why the references could or should be properly combined. The Examiner asserts that the combination would “provide the wireless communications system determines and/or receives location information for the wireless unit along with other information associated with the location information.” Final Office Action, page 2, third full paragraph. However, the method of Burgan et al. does not utilize location information of its communication devices or its broadcast transmission sites, and does not purport to be concerned where its communication devices or broadcast transmission sites are located as the communication device simply selects the signal that has the best signal quality regardless of where the transmission originated or was received. Thus, Appellant contends there is no benefit to Burgan et al. to determine or receive location information from its communication devices, and no logical basis to modify Burgan et al. to make use of such information.

In addition, if Burgan et al. were modified by Garceran et al. to query for supplemental information, the query would have to be directed to the broadcast transmission sites as the method of Burgan et al. is selecting a signal from a broadcast transmission site. Thus, the asserted purpose for the combination would not be achieved as the wireless communication system would not determine or receive location information for its communication devices as required by the Examiner’s reason for combination, but would determine and receive location information of its broadcast transmission sites. Furthermore, there is no reasoned statement as to how or why the communication devices of Burgan et al. would use location information of the broadcast transmission sites as there is no other basis provided in Burgan et al. for selecting a transmission other than it contains information having a broadcast address matching a broadcast address of the receiving communication device, and it has the best signal quality. As such, there can be no *prima facie* case of obviousness as the asserted purpose of the combination is not satisfied and the combination results in no purported benefit to the modified reference.

Appellant further contends that Burgan et al. would be unsuited for its intended purpose if the communication devices were to be required to query for location information as asserted

by the Examiner in the combination of the references. The method of Burgan et al. is intended to provide localized information to a communication device that is located in a wide area communication system. Burgan et al., column 3, lines 36-39. The information is not intended to be individualized, but is intended for broadcast to many devices simultaneously. Burgan et al., column 4, lines 1-3 ("permits resource efficient distribution of localized information by broadcasting such information to all communication devices in a particular local coverage area"). Thus, requiring the communication devices of Burgan et al. to query the broadcast transmission sites for location information in order to select a broadcast transmission site from which to receive localized information would run counter to the efficient distribution of localized information through a simple broadcast. Instead, the broadcast transmission sites would now have to establish communications individually with each communication device receiving its broadcasts before a communication device could select the localized information. Furthermore, because the signal quality is indicative of the relative location of the broadcast transmission site to the communication device, it would be redundant to further query the broadcast transmission site for location information. Finally, the communication device would also have to know its own location in order to make a selection on that basis.

For the reasons provided above, and for further reasons as provided in Appellant's response filed March 31, 2008, Appellant contends that the primary reference of Burgan et al. and the secondary reference of Gareeran et al., taken either alone or in combination, fail to teach, suggest or imply each and every element of Appellant's independent claims 1, 12 and 18. As claim 5 includes all patentable elements of claim 1, this claim is also believed to be allowable. Appellant further contends that the tertiary references used in support of rejection of dependent claims 2-4, 6-11, 13-17, 19 and 20 fail to overcome the deficiencies of Burgan et al. and Gareeran et al. with respect to the independent claims. As a result, Appellant contends that these claims are allowable as well.

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QUALITY

CONCLUSION

In view of the above remarks, Appellant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please deem this a petition for extension of time if necessary to maintain pendency of this patent application. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 08-2025.

If the Examiner or the Review Panel has any questions or concerns regarding this application or request, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date: 29 APR 08



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